IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8431 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJ GALBASANG MABHAIBHAI

Versus

BAROT PARSHOTTAMBHAI MAHIJI BHAI SINCE DECEASED THO' HIS

Appearance:

1. Special Civil Application No. 8431 of 1991

MR AKIL KURESHI for Petitioner No. 1

MR JM RABARI for Respondents No. 1/1

MR RA PATEL for Respondents No. 1/1-1/4,2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 16/03/2002

CAV.JUDGEMENT

1 This is a petition filed under Article 227 of the Constitution of India challenging the order dated

30/08/1991 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.BA.690/89.

2 The petitioner and respondent No.1 (through his heirs), both claim to be tenants of land bearing survey no.922/2 admeasuring 1 Acre and 6 Gunthas situated in village Davol, Taluka Borsad, District Kheda (Now in Anand district). It appears that the Mamlatdar & ALT ('ALT` for short), Borsad started suo motu proceedings under Section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the Act'). The said proceedings were numbered as Case No.5 of 1997 and on 24/01/1979 the ALT dropped the proceedings on the basis of deposition of the landlord, respondent No.2 herein, to the effect that possession of the land had been handed over by one Pashabhai Mahijibhai, predecessor in title to the present respondent No.1. The Deputy Collector, Land Reforms, took up the aforesaid order of ALT in suo motu revision being Case No.102 and by order dated 9/8/1992 remanded the matter to ALT.

3 The ALT numbered the same as Remand Case No. 166/84 and after recording the statement of Manubhai Parshottambhai on 21/10/1988 declared that the said deceased Pashabhai Mahijibhai was tenant of the land in question and was entitled to be restored possession under Section 32(1B) of the Act. The ALT also took a note of the fact that respondent No.1 were not in possession of the land and it was necessary for them to initiate proceedings under Section 84 of the Act for obtaining possession of the land.

4 The petitioner on coming to know about the aforesaid order dated 21/10/1988 (Annexure "A") filed an appeal against the same before the Deputy Collector, Land Reforms, Kheda being Tenancy Appeal No.458 of 1988. The Deputy Collector dismissed the said appeal vide his order dated 22/7/1989. Against the aforesaid order the petitioner preferred Revision Application before the Gujarat Revenue Tribunal ('the Tribunal' for short) and also preferred an application for stay of execution and operation of the orders of the ALT and the Deputy Collector. The Tribunal by its order dated 19/4/1991 rejected the stay application and against the said order the petitioner approached this Court by filing SCA No.3458/91. The said Special Civil Application was disposed of by this Court granting status-quo. Therefore, since that point of time the petitioner who had been in possession of the land continues to remain in possession till date.

5 It is pertinent to note that after the Deputy Collector made order on 9/8/1982 in Case No.102 by remanding the matter to ALT, the petitioner had preferred application under Section 70(b) of the Act on 13/09/1982 seeking declaration to the effect that the petitioner was tenant of the land in question and the said application had been registered at 28/82. It is an admitted position that till the Tribunal decided the revision application i.e. on 30/8/1981 the said application for declaration of tenancy was pending before the ALT and had not been decided by the ALT.

6 Mr.Akil Qureshi, appearing on behalf of the petitioner contended that the ALT was duty bound to consolidate proceedings so as to firstly, avoid conflict between claimants, petitioner and respondent No.1, and secondly, to give full and proper opportunity to the petitioner to place relevant material on record. He further submitted that the Appellate Authority and the Tribunal have upheld the order of ALT without appreciating that, as the petitioner had not been given adequate opportunity and the Tribunal was not entitled to arrive at the findings of fact for the first time, the entire proceedings had resulted in miscarriage of justice as the same were against the principles of natural justice. He further submitted that it was incumbent upon all the authorities to take into consideration that in the event of the petitioner's claim of being tenant in the disputed land was upheld, it would materially affect the rights of respondent No.1 and simultaneously, it was necessary for the ALT to decide whether the petitioner and respondent No.1 were joint tenants or were tenants-in - common or only one of them was tenant.

7. Mr.Akil Qureshi, learned Advocate for petitioner referred to provision of Section 32(1B) of the Act and submitted that all the authorities had failed to understand the true import of the said section. That, it was necessary to come to the conclusion as to whether the landlord was in possession from the specified date i.e. 3/3/1973. Referring to the Explanation under the said section it was submitted that landlord meant the landlord himself or his successor-in-interest, and successor in interest was a person who acquired the interest by testamentary disposition or devolution on death. That in a given case where the land was held by a third party, say for example by way of sale or a gift, then it could not be stated that the land was possessed by the landlord and/or his successor-in-interest and in such circumstances, provision of Section 32(1B) of the Act could not be invoked. According to him, in the present

case the petitioner was in possession of the land and hence the provision of Section 32(1B) could not come into play.

8 Mr.R.A.Patel, appearing on behalf of respondent No.1 submitted that the petitioner had challenged the tenancy of respondent No.1 before the Appellate Authority without establishing his locus or his interest. Elaborating on this submission it was contended that the proceedings under Section 32(1B) could lie only between the tenant i.e. respondent No.1 and the landlord and the petitioner was third party who could not be said to be aggrieved by the order of ALT enabling him to file an appeal and then revision before the Tribunal. That the petitioner had failed to prove that he had any interest in the proceedings. Replying to Mr.Qureshi's contention about possession of landlord, Mr.Patel submitted that it had to be understood in the context of a person being in legal possession of the land and only then recourse to Section 32(1B) was not permissible. However, in a case where a person had not been legally inducted into the land, provision of Section 32(1B) could be availed of by the tenant and a person who had entered the land illegally cannot be allowed to raise dispute about the tenancy. Mr.Patel further submitted that as per the say of the petitioner the tenancy application was filed in 1982 while the remand case was taken up by the ALT in 1984 and ultimately the order had been framed on 21/10/1988. That during this entire period the petitioner had not taken any steps to point out the pendency of his tenancy application before the ALT nor had the petitioner made any request for consolidation of the proceedings and it was too late in the day to make any grievance about the same at this stage. Mr.Patel concluded his submissions by pointing out that concurrent finding of fact had been recorded by all the three authorities and it was not open to this Court to exercise its jurisdiction under Article 227 of the Constitution by entering into reappreciation of evidence. That the Tribunal had arrived at the finding on the basis of the evidence which was led before the ALT which was available on record and it could not be said that the Tribunal had committed any error which would enable this Court to exercise its supervisory jurisdiction under Article 227 of the Constitution of India.

9 Section 32(1B) of the Act lays down certain pre requisite conditions on fulfillment of which a tenant can claim restoration of possession of the land :

[a] Tenant must be in possession of the land on the

appointed day i.e. 15/6/1955.

[b] Tenant must be dispossessed of such land or any part thereof by the landlord before the specified date i.e. 3/3/1973.

[c] The landlord must dispossess the tenant otherwise than in the manner provided in Sec.29 or any other provision of the Act.

[d] The tenant is not in possession of the land on the specified date i.e.3/3/1973.

[e] That the landlord or his successor in interest is in possession of the land on the specified date i.e. 3/3/1973 and such land has not been put to non-agricultural use on or before specified date viz.3/3/1973.

If the aforesaid conditions stand fulfilled the Mamlatdar is required to hold an inquiry and direct that the possession of the land be taken from the landlord and restored to the tenant. Thereafter, the provisions of Section 32 and Sections 32A to 32R (both inclusive) shall become applicable in so far as would be applicable in given set of facts and circumstances.

10. The Tribunal has come to the conclusion that on the appointed day viz. on 15/6/1955 deceased Pashabhai Mahijibhai was tenant in the land and was cultivating the land. While arriving at this finding the Tribunal has taken note of the fact that the landlord has not disputed the order dated 21/10/1988 passed by the ALT and only the petitioner has challenged the said order before the Deputy Collector. That the petitioner has not been able to disprove the findings of the ALT to the effect that as per relevant extract of village form No.7/12 for 1954-55 and 1955-56 deceased-father of the present respondent no.1 was cultivating land as tenant. Furthermore, the petitioner has not taken care to follow up his application under Section 70(b) of the Act pending before the ALT nor has taken care to apply for consolidation of proceedings before the ALT. The Tribunal has further found that the petitioner has not been able to produce any evidence to the effect that the deceased Pashabhai Mahijibhai had been dispossessed of the land by any legal and valid proceedings as required under Section 32(1B) of the Act. While arriving at this finding the Tribunal has once again taken note of the fact that the landlord has not challenged the order dated 21/10/1988 passed by the ALT. The Tribunal has further found that the disputed

land was in possession of the landlord or his successor-in-interest in light of the village form (Panipatrak) available on record. The Tribunal has also found that the various evidences produced by the petitioner, like receipts for land revenue, bills for water etc., are all evidences pertaining to years 1981-82 onwards and not for the prior period. Therefore, on the basis of the aforesaid findings recorded by the Tribunal, it has upheld orders of the ALT and Deputy Collector.

11. However, in para 11 of its order the Tribunal has recorded that it will be open to the petitioner to pursue his application under Section 70(b) of the Act which is pending before the ALT and make proper submissions duly supported by necessary evidence. That simultaneously it would be open to respondent No.1 to contend before the ALT that they were protected tenants and they had been removed without following due procedure of law and in the event a tenant has subsequently been inducted in the land then the right of the protected tenant would be superior and it would be open to respondent No.1 to claim priority accordingly and this aspect has been left open and not decided by the Tribunal.

12. In view of the aforesaid findings recorded by the Tribunal on the basis of concurrent findings of the ALT and the Appellate Authority it is not possible to interfere with the order of the Tribunal. Ideally it would have been in the fitness of things if the Tribunal had exercised its discretion to ensure that the conflicting claims of right of tenancy being decided prior to applying provisions of Section 32(1B) of the Act, yet it is not possible to disturb the order of the Tribunal only on this count. The Tribunal having taken note of the fact that the petitioner had chosen not to apply for being joined as party in the present proceedings before the ALT, nor having taken steps to consolidate his application under Section 70(b) of the Act with these proceedings before the ALT, it is not possible to state that the petitioner has been denied full and proper opportunity. It was incumbent upon the petitioner to take necessary steps to protect his rights and if he failed to do so it could be only to his detriment.

13 It is settled position in law that the supervisory jurisdiction of the High Court under Article 227 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority. The High Court is not required to exercise supervisory jurisdiction to correct an error of

law nor will it review or re-weigh the evidence as the High Court does not act as an Appellate Court.

14 In light of what is stated hereinbefore and especially the Tribunal having kept aspect of determination of tenancy open it is not possible to find any fault with the impugned order of the Tribunal.

15. Various decisions cited on behalf of both the sides have been taken into consideration while arriving at the decision.

16. Rule is thus discharged. Interim relief stands vacated. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt